

Remarks

This Application has been carefully reviewed in light of the Final Office Action (“Office Action”) mailed electronically on March 19, 2009. Applicant appreciates the Examiner’s consideration of the Application. Claims 1-24 remain pending. Applicant respectfully requests reconsideration and allowance of all pending claims.

Claim Objections

Applicant appreciates the Examiner withdrawing his objections to Claims 1, 7, and 13. The Examiner continues to object to Claim 19. Specifically, the Examiner relies on M.P.E.P. ch. 2111.04 in objecting to the language “being operable to” in Claim 19.

Applicant believes the Examiner considers the phrase “being operable to” to be similar to the “adapted to” clause discussed in ch. 2111.04 of the M.P.E.P. However, the M.P.E.P. states “[t]he determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case.” When a “whereby clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention.” (M.P.E.P. ch. 2111.04, citing *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 U.S.P.Q.2d 1481, 1483 (Fed. Cir. 2005)). The analysis should be analogous for an “operable to” clause.

A claim element described as “operable to” perform certain functions covers operations that the element is capable of performing, and not just operations that the element may be capable of performing. The ordinary dictionary definition of “operable” is “practicable.” *See, e.g.*, The American Heritage College Dictionary, 3rd Ed., Houghton Mifflin (1997). The dictionary definition of “practicable” is “capable of being affected, done or put into practice.” *See id.* Thus, elements following the term “operable to” in a particular claim element constitute operations that the claim element is capable of performing. Operations that a claim element is capable of performing are limitations because the element is thus distinguished from the prior art that is not capable of performing the operations.

Additionally, “operable to” is a commonly used term in patent application claims and is present in claims of numerous patents issued by the United States Patent and Trademark Office. An informal search of the USPTO’s website (performed May 13, 2009) returned well over 150,000 issued patents with claims reciting the phrases “operable to” or “being operable to.” Applicant respectfully contends that use of the phrase “being operable to” is proper. In

short, use of the phrase “operable to” in claims is a practice that is both well accepted and currently supported by the PTO. To the extent that the Examiner intends to maintain his position with respect to the phrase “being operable to,” Applicant respectfully requests the Examiner to provide support from applicable authority, such as case law or statutes. Otherwise, Applicant respectfully requests that this objection be withdrawn.

Rejections under 35 U.S.C. § 103

The Examiner continues to reject Claims 1-5, 7-11, 13-17, and 19-23 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya* in view of *Nakae*. Applicant respectfully traverses these rejections for the reasons discussed below.

In order to establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *See* M.P.E.P. § 2143.

Claim 1 recites:

A method for maintaining security of a computer system, comprising:
determining an initial system certainty value for the computer system;
providing access to a database of signatures, each signature including a
signature certainty value;
receiving data;
comparing the received data with the database of signatures;
increasing the system certainty value if the received data does not
match a signature in the database;
decreasing the system certainty value if the received data matches a
signature in the database; and
filtering the data based on the system certainty value and the signature
certainty value of a signature matching the received data.

Applicant respectfully contends that the proposed *Vaidya-Nakae* combination fails to disclose, teach, or suggest every limitation of Claim 1. The Office Action states that *Vaidya* fails to explicitly disclose the limitations “determining an initial system certainty value for the computer system,” “increasing the system certainty value if the received data does not match a signature in the database,” and “decreasing the system certainty value if the received data matches a signature in the database.” *Office Action*, pgs. 5-6. Instead, the Office Action relies on *Nakae* as disclosing or suggesting these limitations. *Office Action*, pg. 6.

Nakae discloses an attack defending system, including a firewall unit and a decoy device. *Nakae*, ¶¶ 0018-0022. After receiving a data packet, the firewall unit “obtains a corresponding confidence level.” *Nakae*, ¶ 0169. This confidence level is compared “with a

predetermined threshold value and, depending on its comparison result,” the received packet is either forwarded to the internal network or to a decoy device. *Nakae*, ¶ 0169. However, the confidence levels of *Nakae* correspond to the IP address of the received data packet. As such, there are “a set of combinations” of different confidence levels for corresponding IP addresses. Applicant respectfully contends that these multiple confidence levels for the multiple sources of received data fail to teach, disclose, or suggest determining an initial system certainty value for the computer system.

Additionally, the Office Action relies on paragraph 176, lines 3-4 of *Nakae* as disclosing “increasing the system certainty value” and paragraph 239, lines 1-7 of *Nakae* as disclosing “decreasing the system certainty value if the received data matches a signature in the database.” *Office Action*, pg. 6. Again, Applicant respectfully contends that these portions disclose the confidence level associated with the source of received data, not a system certainty value.

Additionally, regardless of whether or not the confidence levels of *Nakae* disclose a system certainty value, Applicant respectfully contends that the Office Action’s reliance on the two cited portions of *Nakae* is still misplaced. When a packet is received by firewall 5, the confidence management section 502 (which is part of firewall 5 - *see* ¶ 0168) “obtains a confidence level corresponding to the IP address” of the packet. *Nakae*, ¶ 0174. If no match is found for the IP address, a default initial value is output as the confidence level for that packet. *Id.* at ¶ 0175. After a confidence level is output, the confidence management section 502 increases the relevant confidence value. *Id.* at ¶ 0176. Therefore, according to *Nakae*, the confidence level of a given IP address is increased regardless of whether there is a matching IP address stored in confidence management section 502. As such, Applicant respectfully contends that *Nakae* fails to disclose, teach, or suggest increasing the system certainty value if the received data does not match a signature in the database and decreasing the system certainty value if the received data matches a signature.

Furthermore, in certain instances, the firewall may guide a received IP packet to the decoy unit to determine if there is an attack. If the decoy device detects an attack, it sends an alert and “the confidence level of the source IP address included in the alert is decreased.” *Id.* at ¶ 0239. The decoy device detects an attack is occurring based on whether a rule associated with a predetermined attack category is violated. *Id.* at ¶ 0024. However, there is no teaching, disclosure, or suggestion that this determination is based on signatures. As such,

applicant respectfully contends that this fails to disclose or suggest decreasing the system certainty value if the received data matches a signature..

The Office Action states that *Nakae* “makes a correlation between increasing/decreasing the confidence level in association with attacks based on information.” *Office Action*, pg. 11. Applicant does not necessarily agree. Claim 1 requires increasing the system certainty value if the received data does not match a signature in the database and decreasing the system certainty value if the received data matches a signature. As shown above, the system in *Nakae* increases a confidence level for individual IP addresses whenever a packet is received—regardless of whether the data matches or does not match a signature. Additionally, the system of *Nakae* decreases a confidence level for individual IP addresses whenever an attack is detected, and there is no disclosure or suggestion that this occurs because data either matches or does not match a signature. For at least these reasons, Applicant respectfully contends that *Nakae* fails to disclose, teach, or suggest the limitations “determining an initial system certainty value for the computer system,” “increasing the system certainty value if the received data does not match a signature in the database,” and “decreasing the system certainty value if the received data matches a signature in the database.” Accordingly, Applicant respectfully requests reconsideration and allowance of Claim 1.

Claims 2-5 depend from Claim 1 and incorporate all the limitations thereof. As such, Applicant respectfully requests reconsideration and allowance of Claims 2-5 for at least the same reasons as Claim 1.

Similar to Claim 1, Claims 7, 13, and 19 include elements directed to “increasing the system certainty value if the received data does not match a signature in the database” and “decreasing the system certainty value if the received data matches a signature in the database.” Thus, for at least the reasons discussed above with regard to Claim 1, Applicant respectfully requests reconsideration and allowance of Claims 7, 13, and 19. Claims 8-11 depend from Claim 7 and incorporate all the limitations thereof. Claims 14-17 depend from Claim 13 and incorporate all the limitations thereof. Claims 20-23 depend from Claim 19 and incorporate all the limitations thereof. As such, Applicant respectfully requests reconsideration and allowance of Claims 8-11, 14-17, and 20-23 be withdrawn.

The Examiner continues to reject Claims 6, 12, 18, and 24 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya* in view of *Nakae* and in further view of *Moran*. Applicant respectfully traverses these rejections for the reasons discussed below.

Claim 6 depends from Claim 1, and incorporates all the limitations thereof. Claim 12 depends from Claim 7 and incorporates all the limitations thereof. Claim 18 depends from Claim 13 and incorporates all the limitations thereof. Claim 24 depends from Claim 19 and incorporates all the limitations thereof. As discussed above, the proposed *Vaidya-Nakae* combination fails to teach all of the elements of Claims 1, 7, 13, and 19. *Moran* fails to overcome these deficiencies. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 6, 12, 18, and 24 for at least the same reasons as discussed above with regard to their respective base claims.

No Waiver

All of Applicant's arguments are without prejudice or disclaimer. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The remarks discussed by Applicant are sufficient to overcome the Examiner's rejections.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

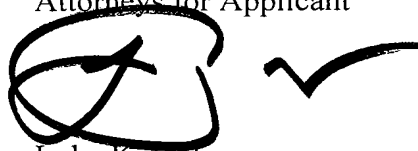
Applicant believes that no fee is due. However, the Commissioner is hereby authorized to charge any fee or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Luke K. Pedersen, Attorney for Applicant, at the Examiner's convenience at (214) 953-6655.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to be 'L. K. Pedersen', enclosed within a circular scribble.

Luke K. Pedersen
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Date: _____

5-18-09

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